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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/556,858

11/09/2006

Lasse Kjeldsen

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EXAMINER

NICHOLS II, ROBERT K

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

06/01/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/556,858	<b>Applicant(s)</b> KJELDSSEN ET AL.	
	<b>Examiner</b> ROBERT K. NICHOLS II	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36-68 is/are pending in the application.
- 4a) Of the above claim(s) 37-46, 52-63, 65 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36, 47-51, 64, 67 and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/14/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species 2 - Figures 2a-2b in the reply filed on 02/22/2010 is acknowledged. It is noted the typographical error on page 3 of the restriction requirement which indicates claim 7 being drawn to species 7 should recite claim 52 is drawn to Species 7, a pouring spout including a movement area having a bulge.

Claims 37-46, 52-63, 65 and 66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim.

The traversal is on the ground(s) that claim 36 recites a special technical feature that defines a contribution over the prior art. This is not found persuasive because features of independent claim 36 can not be considered "special technical features" since the features fail to define a contribution over the prior art as elaborated below. Accordingly, the requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 36, 47-51, 64, 67 and 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 recites "a movement area of a pin cooperating with each other" in line 12. It is uncertain as to what other element the movement area of a pin is cooperating with. It is suggested to amend to --a movement area cooperating with a pin--.

Appropriate correction required.

Claim 36 recites "to facilitate said liquid from the container to the exterior" in lines 4-5. It is unclear as to what is facilitated i.e. the pouring process.

Appropriate correction required.

Claim 48 recites "said at least one pin" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction required.

Regarding claim 68, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 48 recites "said movement area is defined by at least one recess included by said inner tubular means." Applicant's discloses the recess being included in the outer tubular means (see fig 2a and page 15, lines 22-25 of the specification).

Appropriate correction required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 36, 47, 49 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen (US 2,980,302).**

Regarding claims 36, as best understood Rasmussen discloses a pouring spout including: an outer tubular means 12; inner tubular means 11 with an inner passage (see fig. 2), the inner tubular means 11 being partly or totally integrated in the outer tubular means 12 and the means being movable in relation to each other (see figs. 2 and 3); a stick 22 including closing means 23 at one end for closing or opening the inner passage by movement of the outer or inner tubular means in relation to each other (see figs. 2 and 3), the stick 22 including closing means 23 being movable from a first defined position (fig. 3) where the inner passage is closed to one or more further positions at least one of which is defined and at least one of which is a second defined position where said inner passage is open (fig. 2); and a movement area (figs. 6 and 6a) cooperating with a pin 19 to provide for at least the following principles of usage: maintenance of the outer and inner tubular means in relation to each other in the first defined position where the inner passage is closed (see fig. 3), maintenance of the outer and inner tubular means in relation to each other in the second defined position where the inner passage is open (fig.2), and free movement of the outer and inner

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tubular means in relation to each other at least between the first and second defined positions (see fig. 6).

Regarding claim 47, as best understood Rasmussen discloses the movement area being defined by at least one opening included by the outer tubular means 12 and the pin 19 being connected to an outer surface of the inner tubular means 11 (see figs 2, 3, 6 and 6a).

Regarding claim 49, as best understood Rasmussen discloses the movement area includes two openings or recesses being perpendicular or parallel to a centre line of the inner or outer tubular means (see figs 2, 3 and 6).

The method steps of claim 67 are inherently performed when the device of Rasmussen is used for dispensing.

**Claims 36, 47, 64 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Matter (US 3,128,915).**

Regarding claims 36 and 64, as best understood Matter discloses a pouring spout including: an outer tubular means 6; inner tubular means 4 with an inner passage; and a container 1 (see figs. 1-3), the inner tubular means 4 being partly or totally integrated in the outer tubular means 6 and the means being movable in relation to each other (see figs. 1-3); a stick 13 including closing means 11 at one end for closing or opening the inner passage by movement of the outer or inner tubular means in relation to each other (see figs. 1-3), the stick including closing means 11 being movable from a first defined position (fig. 1) where the inner passage is closed to one or

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more further positions at least one of which is defined and at least one of which is a second defined position where said inner passage is open (fig. 2); and a movement area 17 (fig. 4) cooperating with the pin to provide for at least the following principles of usage: maintenance of the outer and inner tubular means in relation to each other (i.e. preventing rotation) in the first defined position where the inner passage is closed (see fig. 1), maintenance of the outer and inner tubular means in relation to each other in the second defined position where the inner passage is open (fig. 2), and free movement (i.e. axial movement) of the outer and inner tubular means in relation to each other at least between the first and second defined positions (see figs. 1-3).

Regarding claim 47, as best understood Matter discloses the movement area being defined by at least one opening included by the outer tubular means 6 and the pin being connected to an outer surface of the inner tubular means 4 (see figs. 1-4).

Regarding claim 68, the Examiner notes the container of Matters is capable of containing a beverage.

**Claims 36, 47, 49, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by McCord (US 1,083,552)**

Regarding claims 36, as best understood McCord discloses a pouring spout including: an outer tubular means 14; inner tubular means 11 with an inner passage (see fig. 1), the inner tubular means 11 being partly or totally integrated in the outer tubular means 14 and the means being movable in relation to each other (see figs. 1 and 2); a stick 12 including closing means 18 at one end for closing or opening the inner

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passage by movement of the outer or inner tubular means in relation to each other (see fig 1), the stick 12 including closing means 18 being movable from a first defined position where the inner passage is closed to one or more further positions at least one of which is defined and at least one of which is a second defined position where said inner passage is open (see page 1, lines 65-72); and a movement area 16 cooperating with a pin 15 to provide for at least the following principles of usage: maintenance of the outer and inner tubular means in relation to each other in the first defined position where the inner passage is closed (see fig. 2), maintenance of the outer and inner tubular means in relation to each other in the second defined position where the inner passage is open (fig. 1), and free movement of the outer and inner tubular means in relation to each other at least between the first and second defined positions (see fig. 2).

Regarding claim 47, as best understood McCord discloses the movement area 16 being defined by at least one opening included by the outer tubular means 14 and the at least one pin 15 being connected to an outer surface of the inner tubular means (see fig. 2).

Regarding claim 49, as best understood McCord discloses the movement area 16 includes two openings or recesses being perpendicular or parallel to a centre line of the inner or outer tubular means (see fig. 2).

Regarding claim 50, as best understood McCord discloses a first and further openings or recesses being perpendicular to each other forming one or more successive S shapes (see fig. 2).



Regarding claim 51, as best understood McCord discloses the movement area 16 includes a first and third opening or recess being perpendicular to the centerline (see fig. 2) and establishing two defined positions for the stick (i.e. open fig 1 or closed fig. 2) including closing means 18 having an opened and closed position for the inner passage (see figs. 1 and 2).

**Claims 36, 48 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Mann (US 2,127,040)**

Regarding claims 36, as best understood Mann discloses a pouring spout including: an outer tubular means 26; inner tubular means 16/21 with an inner passage; and a container 1 (see fig. 1), the inner tubular means 16/21 (fig. 2) being partly or totally integrated in the outer tubular means 26 and the means being movable in relation to each other (see pg. 1, col. 2, lines 17-29, and pg. 2, lines 39-73); a stick 39 (fig. 5) including closing means 42 at one end for closing or opening the inner passage by movement of the outer or inner tubular means in relation to each other (pg. 2, lines 39-73), the stick 39 including closing means 42 being movable from a first defined position where the inner passage is closed to one or more further positions at least one of which is defined and at least one of which is a second defined position where the inner passage is open (pg. 2, lines 39-73); and a movement area 17 (fig. 4, pg. 1, col. 2, lines 18-25) cooperating with the pin 44/41 to provide for at least the following principles of usage: maintenance of the outer and inner tubular means in relation to each other in the first defined position where the inner passage is closed (see pg. 2, lines 39-73),

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maintenance of the outer and inner tubular means in relation to each other in the second defined position where said inner passage is open, and free movement of the outer and inner tubular means in relation to each other at least between the first and second defined positions (see pg. 2, lines 39-73).

Regarding claim 48, as best understood Mann discloses the movement area 17 being defined by at least one recess included by the inner tubular means 16/21 and the at least one pin 44/41 being connected to an inner surface of the outer tubular means 26 (see fig. 2).

The method steps of claim 67 are inherently performed when the device of Mann is used for dispensing.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754